one of the chief assets of her husband. I am satisfied, therefore, that the learned trial Judge was right in his finding on the evidence that the conveyance to the wife was fraudulent as against the creditors.

In bankruptcy a particular significance has always been given to the word fraudulent. A conveyance which would not be fraudulent when the parties are solvent can be fraudulent in a bankruptcy, because the interests of other creditors have not been observed. The bankrupt having made a fraudulent conveyance, had committed an act of bankruptcy under section 3(1)(b) of the Bankruptcy Ordinance.

The bankrupt was adjudicated bankrupt on the 9th of March, 1934. By section 46 of the Bankruptcy Ordinance the bankruptcy is deemed to have relation back and to commence at the time of the first act of bankruptcy proved to have been committed within twelve months next preceding the date of the adjudication. Therefore the bankruptcy commenced on the 18th November, the date when the fraudulent conveyance was executed. The sale by the wife having taken place after that date, it will also be invalid unless protected by some provision of the law, since the wife, having no right owing to the bankruptcy, could give no title.

It has been argued that section 52 of the Bankruptcy Ordinance provides such a protection. That section provides that nothing shall invalidate any conveyance or assignment by a bankrupt for valuable consideration provided:

" that the date of payment.....takes place before the date of the receiving order and that the person by whom the payment.....was made at the time of the payment has not notice of any available act of bankruptcy committed by the bankrupt before that date."

That section only relates to a conveyance by the bankrupt himself. It is not extended to persons who derive their title from a person to whom the bankrupt has conveyed.

This question was dealt with in the case of *In re Carl Hirth, ex parte The Trustee* [1899] 1 Q.B. 612. Lindley M.R. in the course of his judgment said at page 622:—

" We have, therefore, to consider what is the position of a trustee who finds that there has been a fraudulent conveyance, which is an act of bankruptcy, and who elects to impeach the transaction and demands back the property from the person in whose possession it is. What is the answer to that. It appears to me that there is absolutely no answer at all except this: that there are certain provisions in the Bankruptcy Act which relate to what are called protected transactions; and of course if a transaction is protected by those provisions, then the trustee cannot enforce that claim. However, we need not trouble ourselves about them. The facts exclude the application of those sections. There is nothing, so far as I have gone yet, which points to any difficulty at all in the way of the trustee who claims this property upon the ground that the conveyance, which is an act of bankruptcy, was void under section 43 as from its date, when it was overreached by the petition and the adjudication."

And so in the present case, the facts exclude the application of the corresponding section. There was a fraudulent conveyance which was an act of bankruptcy, and to which the bankruptcy dated back. The conveyance by the bankrupt is consequently set aside. There has been no conveyance by the bankrupt to the person claiming the land. The wife had no title to convey to the claimant.

I turn now to the Statute of 13 Elizabeth Chapter 5 which, as part of the Common Law of England, is still in force in the Straits Settlements. Its provisions are of course not affected by the English Law of Property Act of 1925. Chapter 5 deals with fraudulent conveyances. Thereby, fraudulent conveyances with intent to delay hinder or defraud creditors are deemed to be 'clearly and utterly void, frustrate and of no effect.' There is a proviso by which the Statute does not extend :

" to any estate or interest in lands . . . . conveyed . . . . upon good consideration and *bona fide* lawfully conveyed.....to any person . . . . not having at the time of such conveyance . . . . any manner of notice . . . . of such fraud . . . .; anything mentioned to the contrary notwithstanding."

These old provisions, in my opinion, offer no greater protection than section 52 of the Bankruptcy Ordinance. The conveyance which comes within the intention of the Statute is the conveyance by the bankrupt to his wife. It is not a question of the conveyance of the wife to the claimant.

Under the Statute, the conveyance to the wife would be, in view of the findings of fact in the present case, clearly void. The conveyance to the claimant is in consequence also void, since the person conveying to him had no title. The appeal, therefore, fails and must be dismissed with costs.

Howes J.: I concur.

Appeal dismissed.

Solicitors: *Sundrum & Khoo.*

S.T. JAMES v. REX *

[A.Cr.J. (Burton Ag. C.J.) June 7, 1935]

[Singapore Magistrate's Appeal No. 11 of 1935]

Evidence of system — Evidence Ordinance, ss.14 and 15.

In a trial on a charge of extortion, evidence may be given of similar payments to accused on dates not specified in the charge, in order to shew the dishonest [9] intention, irrespective of any question of anticipating the defence. Such evidence may not be used to corroborate the fact of payment. [9]

MAGISTRATE'S APPEAL.

Appellant was convicted on 30th day of April, 1935 by the District Judge and First Magistrate, Singapore on two charges of extorting $2 from one Mutusamy on or about the 3rd November, 1934 and $10 from one Pertayan on or about the 26th September, 1934. There was a third charge in respect of one Sagoo on which appellant was acquitted. Appellant was an overseer in charge of a number of Municipal labourers and the three persons named in the charges were labourers employed in the appellant's district and under his immediate supervision. The witnesses Mutusamy, Sagoo and Pertayan gave evidence of making the payments specified in the charges under threats of being defaulted and through consequent fear of

* This decision was commented on in [1935] M.L.J. at p. lxxxii.

losing their employment. In addition they gave evidence of similar payments on other occasions made under the same threats and fear. The prosecution called one Raman and fifteen other labourers and mandores who also were employed in appellant's district, and who gave evidence of making similar payments.

The appellants appealed against his conviction on the ground that the evidence of Raman and other witnesses who gave evidence of "system" was inadmissible.

Page for the appellant. There was no evidence on either charge but that of the complainant: no corroboration. It was accomplice evidence. Rest of evidence consisted of allegations of other criminal offences. It is not competent to the prosecution to prove one offence by proving that accused had committed other similar offences. *Halsbury* 2nd Ed. Vol. 13 p. 567, *Makin* v. *A.-G. of N.S.W.* ([1894] A.C. 57) judgment of Herschell L.C. at p. 65.

He referred to *R.* v. *Armstrong,* [1922] 2 K.B. 555; *R.* v. *Bond,* [1916] 2 K.B. 289 at p. 414; *R.* v. *Ball,* [1911] A.C. 41; 6 Cr. App. R. 31; *R.* v. *Rodway,* [1913] 3 K.B. 468; *R.* v. *Thompson,* [1912] 3 K.B. 19 and *R.* v. *Vyapoory Mudaliar,* (1855) I.L.R. 6 Cal. 655.

Worley, D.P.P. for the respondent. Evidence Ordinance, section 14 and section 15.

Woodroffe and Ameer Ali, 8th Ed. p. 209. Intention is an essential element of offence of extortion.

Section 383 P.C. Prosecution case is that the money was handed to accused as the result of threats of being reported, leading to defaulting or dismissal. Nothing inherently unlawful in accused taking money from any of the coolies.

The prosecution is entitled to prove such facts as go to show that in the particular case the inference ought to be drawn that the act was guilty and not an innocent one. He referred to *R.* v. *Ball, supra,* at p. 63 and adopted the argument of the A.-G. at the foot of that page. He also referred to *R.* v. *Wyatt,* [1904] 1 K.B. 188; *R.* v. *Bond, supra; R.* v. *Fisher,* [1909] 1 K.B. 149; *R.* v. *Boyle & Merchant,* [1914] 3 K.B. 339; *R.* v. *Christie,* [1914] 10 Cr. A.R. 141; *Perkins* v. *Jeffery,* [1915] 2 K.B. 702; *R.* v. *Smith,* (1915) 11 Cr. A.R. 230; *R.* v. *Armstrong, supra*; *R.* v. *Porter,* (1935) 25 Cr. A.R. Part 2, 59; *R.* v. *Whiley,* 2 Leach C.C. 983; *R.* v. *Graham,* (1909) 3 Cr. A.R. 252; *R.* v. *Cheshire & Ors.,* 20 Cr. A.R. 47; *Vyapoory Mudaliar, supra; Gour's* Penal Law of India, 4th Ed. Vol. I p. 911; *R.* v. *Vajiram,* (1892) 16 B. 414; *R.* v. *Panchu,* (1920) 47 C. 671; *Amrita* v. *R.,* (1915) 42 C. 957 and *R.* v. *Harris, (Dora),* [1927] 2 K.B. 587.

It has been doubted if the prosecution can call evidence in rebuttal in a summary case under our Code. Section 178 Cr. P.C. *Braddell's* Law of the Straits Settlements, Vol. II, 95.

In this case there was no definite indication of what the defence is going to be. In England, if a prisoner on arrest makes a statement indicating his defence, that statement can be proved and defence can only depart from it at grave risk. In the Colony, even though the Crown is in possession of a statement by prisoner, it cannot be proved: and the accused can set up a completely new defence at the trial.

Page in reply.

Burton Ag. C.J. delivered oral judgment:—

The appellant in this case was convicted by the District Judge on two charges of extortion. Beyond the evidence of these two charges evidence of numerous instances of parallel extortions was given, and the conviction has ben attacked on this ground. Many cases have been cited in the course of the argument and in an oral judgment I cannot do justice to the legal argument but my mind is clear and I have decided not to reserve judgment. The principle on which "system" evidence is admissible is stated by Lord Herschell in *Makin* v. *A.-G. of N.S.W., supra,* at p. 65 as follows:—

> "In their Lordships' opinion the principles which must govern the decision of the case are clear, though the application of them is by no means free from difficulty. It is undoubtedly not competent for the prosecution to adduce evidence tending to shew that the accused has been guilty of criminal acts other than those covered by the indictment, for the purpose of leading to the conclusion that the accused is a person likely from his criminal conduct or character to have committed the offence for which he is being tried. On the other hand, the mere fact that the evidence adduced tends to shew the commission of other crimes does not render it inadmissibl if it be relevant to an issue before the jury, and it may be so relevant if it bears upon the question whether the acts alleged to constitute the crime charged in the indictment were designed or accidental, or to rebut a defence which would otherwise be open to the accused. The statement of these general principles is easy, but it is obvious that it may often be very difficult to draw the line and to decide whether a particular piece of evidence is on the one side or the other."

[10] It is not the principle which is in dispute but the application. It is clear that the prosecution cannot produce evidence of parallel extortions to prove the fact: it can produce the evidence to prove the mind. The fact must be proved independently. [10]

The question is, has the District Judge faced this problem correctly? He states in his judgment: "I find that the evidence of Mutusamy, Sagoo and Pertayan discloses a *prima facie* case" and again "Raman and the subsequent Tamil witnesses gave so-called system evidence which I hold admissible, after *prima facie* proof of the existence of the substantive offence, in order to rebut any defence, notably that of innocent possession or receipt of the monies paid by the coolies, which the Crown think the accused may put forward, whether or no such defence is indicated by the cross-examination or is in fact put forward at all."

It seems to me that the District Judge has clearly found the fact proved. Some difficulty was caused by the use of the word *prima facie* which usually means a case to answer. I think he means that the fact of payment is proved although the mind may be doubtful. There is no appeal as to whether the fact is proved and I accept this finding. The whole question is, did he properly admit the other evidence. The D.P.P. did argue on a passage in the judgment of Bray J. in *R.* v. *Bond, supra,* that the evidence could be

admitted to corroborate the fact of payment. Even if this is good law in England, it is doubtful if it is good law here because section 14 of the Evidence Ordinance only refers to a state of mind. The question then is, was the evidence properly led to anticipate the defence? I think it was because, even if the defence were not put up, the prosecution must prove dishonesty as part of the substantive offence. Therefore as the duty of the prosecution is to prove the charge substantively irrespective of the defence, I think the evidence was admissible for that purpose, irrespective of the question of anticipating the defence. It follows that the appeal must be dismissed.

Appeal against conviction dismissed.
Sentence reduced.

Solicitors: *Allen & Gledhill.*

TEO KOON SENG v. REX

[A. Cr. J. (Terrell J.) October 3, 1935]

[Singapore Magistrate's Appeal No. 21 of 1935]

Admissibility of evidence — Evidence of system.

It is not competent for the prosecution to adduce evidence tending to show that the accused has been guilty of criminal acts other than those covered by the indictment for the purpose of leading to the conclusion that the accused is a person likely from his criminal conduct and character to have committed the offence for which he is being tried. Such evidence may however be relevant if it bears upon the question whether the acts alleged to constitute a crime charged in the indictment were designd or accidental, or to rebut a possible defence.

Makin v. *The Attorney-General* of N.S.W. [1894] A.C 57 followed.

Battenberg for the appellant.

Worley, Deputy Public Prosecutor, for the Crown.

The facts and arguments sufficiently appear from the judgment.

Terrell J.: The appellant was charged at the instance of one Chang Ah Ngau with extortion on three separate occasions and was convicted. According to the evidence, which was apparently accepted by the learned Magistrate, the accused sent one Teo Ah Chik to the complainant's house and Teo Ah Chik prevailed on the complainant to come to the accused's house where, under threats of exposure to the Protector of Chinese, he extracted money from her. Ah Chik was charged with abetment and also convicted. The exposure threatened was that the complainant was not properly married to the man with whom she was living.

In support of the prosecution two witnesses were called to prove that the accused was in the habit of extorting money from other people. Both witnesses were admittedly prostitutes and stated that they had paid money to the accused to avoid being reported to the Protectorate. Counsel for the defence objected to such evidence being admitted but were overruled. All that the learned Magistrate says on the subject is this:

"This brings in the 'system' evidence to which the counsel object. I consider that it can be admitted though, of course, it does not prove the main charges and must be ignored for the purpose of assessing the punishment."

With all respect to the learned Magistrate, if it was not admitted for proving the main charges, I fail to see its relevance. The law on the subject has been stated again and again by Courts of the highest authority and it is not necessary to review all the cases. In my opinion the law is succinctly summarised in the judgment of Lord Herschell in *Makin* v. *The Attorney-General of N.S.W.,* [1894] A.C. p. 57, in a passage which is quoted with approval by A. T. Lawrence J in *Rex* v. *Bond,* [1906] 2 K.B. at p. 420. The passage from the judgment of Lawrence J. reads as follows:—

"The general rule is stated by Lord Herschell in these terms: 'It is undoubtedly not competent for the prosecution to adduce evidence tending to show that the accused has been guilty of criminal acts other than those covered by the indictment, for the purpose of leading to the conclusion that the accused is a person likely from his criminal conduct or character to have committed the offence for which he is being tried. On the other hand, the mere fact that the evidence adduced tends to show the commission of [11] other crimes [11] does not render it inadmissible if it be relevant to an issue before the jury, and it may be so relevant if it bears upon the question whether the acts alleged to constitute the crime charged in the indictment were designed or accidental or to rebut a defence which would otherwise be open to the accused.' The relevance depends upon the issues actually in contest; whenever it is in issue whether the prisoner, though he did the act alleged, did it without any intention, i.e. accidentally, without any criminal intention, i.e. innocently, such evidence may be given."

Can it be said in the present case that it was an issue before the Court whether the accused received the money accidentally or innocently? It appears to me to be abundantly clear that if the story of the complainant is accepted the accused's intention was necessarily dishonest. If he was a person who made his living as an informer and through an intermediary induced a woman he did not know to come to his house and obtained money from her, what innocent explanation is possible? It is also clear that no such defence was ever indicated in the cross-examination of prosecution witnesses, and, in the circumstances of the case, it is to my mind quite inconceivable that such a defence could have been put forward. Take the case of theft. Is it permissible for the prosecution to bring forward evidence of other thefts upon which the accused has never been prosecuted in order to prove that when he entered the house of a complete stranger he removed articles not belonging to him with a dishonest intention? As Bray J. says in *Rex* v. *Bond,* [1906] 2 K.B. at p. 415, "a number of acts of theft do not as a rule constitute a system. They are isolated acts having no connection with one another."

I have been referred to a judgment of Burton Ag. C.J. in a recent criminal appeal, *Rex* v. *James,* No. 11 of 1935, which has not yet been reported but which it is said was cited to the learned Magistrate, though it is not referred to by him in his grounds of judgment. The learned Judge held in that case that evidence of other acts of extortion was admissible to anticipate a possible defence, and that even if the defence was not put up the prosecution were entitled to prove dishonesty as part of their substantive case. I regret that I am unable to accept this ruling as being of general